IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 16283 of 2007(L)

PETITIONER:

MOOSA HAJEE, AGED 57 YEARS,
S/O ABDULLA HAJI, MAYAN KULATHI MEETHAL HOUSE,
MANTHARATHUR, KOZHIKODE.

BY ADV. SRI.MANJERI SUNDERRAJ

RESPONDENTS:

STATE OF KERALA,
REP.BY S.H.O. VATAKARA POLICE STATION,
REP.BY GOVERNMENT PLEADER,
HIGH COURT OF KERALA, ERNAKULAM.

BY GOVERNMENT PLEADER SRI.S.U.NAZER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J.

W.P.C.NO.16283 OF 2007

Dated this the 15th day of June, 2007.

JUDGMENT

Petitioner is the accused in a prosecution for offences punishable under Sections 447 and 379 r/w 34 I.P.C. According to the petitioner, he is absolutely innocent. The prosecution has been initiated at the instance of his daughter with whom he has a property dispute and which dispute is already in the seizin of civil courts. The grievance of the petitioner is that C.M.P.No.1063 of 2004 filed by him as early as in 2004 was kept in the file by the learned Magistrate for a long period of time and is ultimately dismissed only on 16.03.2007. Without disposing of that petition, it was kept on the file obliging the petitioner always to appear before the learned Magistrate or file petitions to excuse absence from time to time. This course adopted by the learned Magistrate is incorrect. The keeping of the petition without disposal is incorrect. The final disposal against the petitioner is also incorrect. These are the grievances raised by the learned counsel for the petitioner.

2. I am in ready agreement with the learned counsel for the petitioner that the conduct of the learned Magistrate in not

disposing of C.M.P No.1063 of 2004 till 16.03.2007 and the ultimate dismissal of that application are both not justifiable at all. The offences alleged are only summons offences. Under Section 205 Cr.P.C, the court has a discretion to grant the said request for exemption. I am at a loss to understand how and why the learned Magistrate chose not to exercise the discretion in favour of the petitioner, who was willing to be represented by a counsel who at the Bar submits that he did not want to dispute identity in the course of trial.

3. I must express my very strong dissatisfaction with the manner in which the learned Magistrate has held with the application and finally disposed of the matter. Unnecessary ritualistic insistence on the personal appearance of the indictees before courts has to be dispensed with, especially when they are willing to be represented by a counsel. Though this principle has been stated repeatedly and reiterated many times in various decisions. An officer ....at the instant case has .....the need for the system to be a user friendly. I express my dissatisfaction and direct that a copy of this order be sent to the learned Chief Judicial Magistrate for information and cognizance.

4. Coming back to the facts of the case, even though the order was passed on 16.03.2007, no warrant of arrest was issued against the petitioner and the trial continued. Long later, on 15.05.2007, when the matter was posted for 313 examination, the accused was absent, his bail bond was cancelled and on the same day steps were directed to be taken under Sections 82 and 83 Cr.P.C. Notice was ordered to the sureties also. The learned counsel for the petitioner submits that this also reflects the attitude of the learned Magistrate in the matter of insisting on appearance of the petitioner. Even the 313 examination could have been dispensed with if the application under Section 205 Cr.P.C were allowed. More over, the case was posted for 313 examination for the first time on 15.05.2007. On that date, the petitioner had a difficulty. He had applied to be excused, but inspite of that a non bailable warrant (not a bailable warrant) was issued and simultaneously steps under Sections 82 and 83 Cr.P.C were issued along with notice to sureties. I condemn the practice followed by the learned Magistrate.

5. In the result, this Writ Petition is, allowed. It is directed that the petitioner can appear before the learned Magistrate on 17.07.2007. The non bailable warrant issued

against the petitioner and the steps under Sections 82 & 83 Cr.P.Cand the notice issued to the sureties shall not be proceeded with. The petitioner, when he appears on 17.07.2007, shall be permitted to continue to remain on bail. He shall be questioned under Section 313 Cr.P.C on that date itself and the case against him shall be disposed of as expeditiously thereafter as possible. Personal appearance of the petitioner shall not be insisted except to receive the judgment on the final day.

R.BASANT
JUDGE

rtr/